



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

501-03-00

Date: July 16, 2013

Release Number: 201349016

Release Date: 12/6/2013

LEGEND

ORG - Organization name

XX - Date Address - address

ORG
ADDRESS

Taxpayer Identification Number:
Person to Contact:
Employee Identification Number:
Employee Telephone Number:
(Phone)
(Fax)

CERTIFIED MAIL - RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated February 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective June 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents to establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals.

You failed to distribute your assets to a qualified 501(c)(3) organization. You sold your assets to a for profit organization. The proceeds from the sale of assets were retained by your director. The retained sale proceeds of your assets inured to your director.

Contributions to your organization are no longer deductible under IRC §170 after June 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending May 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Internal Revenue Service
Tax Exempt and Government Entities Division
100 Myrtle Avenue, 6th Floor
Brooklyn, NY 11201

Department of the Treasury

Date: April 9, 2013

ORG
ADDRESS

Taxpayer Identification Number:
Form:
Tax Year Ended:
Person to Contact/ID Number:
Contact Numbers:
Telephone:
Fax:

Certified Mail – Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN		Year/Period ended May 31, 20XX

LEGEND

ORG - Organization name EIN - ein XX - date Address - address City -
city State - state DIR - Director DIR-1 - 1st DIR RA-1 - 1st RA

Issue 1

Should ORG's tax-exempt status be revoked because they failed to maintain records?

Issue 2

Should ORG's tax-exempt status be revoked because the organization failed to transfer its assets upon dissolution to another 501 (c) (3) organization?

Facts

ORG incorporated in State State on June 23, 19XX. The organization received tax-exempt status from the IRS in February 19XX. The IRS granted the organization 501(c) (3) status as an IRC 170(b) (1) (A) (ii) organization. ORG operated at Address, City, State.

The IRS selected ORG's 20XX Form 990 fiscal year ending May 31, 20XX for audit. The IRS mailed ORG a notice of audit with a written request for records (Form 4564) on October 20, 20XX.

We conducted an interview with director DIR on January 13, 20XX at the Internal Revenue Service's office. DIR and DI1 were the organization's board members during the period of June 1, 20XX until May 31, 20XX. DIR and DIR-1 also served as the organization's principal officers. DIR stated he was responsible for the organization's daily activities.

DIR failed to provide all requested bank statements and all requested credit card statements. DIR stated the organization did not maintain minutes from meetings, a roster of students, student applications and tuition receipt statements. DIR stated the organization was small and not staffed adequately to maintain all the records requested by the IRS.

We issued subsequent document requests on 2/17/20XX and 4/12/20XX. We expanded the scope of the audit to the organization's 20XX and 20XX tax returns. We conducted an audit of the organization's 20XX and 20XX tax returns at the office of the organization's power of attorney. The organization provided copies of all bank statements and credit card statements. The organization did not provide minutes from meetings, a roster of students, student applications and tuition receipt statements.

DIR stated the organization operated a day care that provided a learning curriculum for its students but was unable to provide a written curriculum.

DIR provided a sales contract stating the final day of operations for ORG was on May 31, 20XX. The contract stated DIR and DIR-1 sold the organization's assets for \$ on May 5, 20XX to RA-1. The effective date of the sale was June 1, 20XX. Included in the sale were furniture, supplies, fixtures and equipment located at the premises. The contract stated the purchaser was not responsible for any debts, mortgages security interests or other liens or encumbrances. RA-1 was an employee of ORG. RA-1 operated the organization as a for-profit corporation name ORG DIR retained the proceeds from the sale of assets.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended May 31, 20XX	

Law

Issue 1

IRC section 501(c)(3) provides for exemption of organizations organized and operated exclusively for charitable purposes, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

IRC section 170(b) (1) (A) (ii) an educational organization, which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

IRC section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records render such statements, make such returns, and comply with such rules and regulation as the Secretary of the Treasury or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC Section 6033(a)(1) provides, except as provided in IRC section 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Rev. Proc. 75-50; 1975-2 C.B. 587, sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from federal income tax under section 501(c)(3) of the Code or are presently recognized as exempt from tax have racially nondiscriminatory policies as to students. Section 2.02 provides that a school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the general public and that since the adoption of that policy the school has operated in accordance therewith. Section 4.03 provides that a school must make its racially nondiscriminatory policy known to all segments of the general community served by the school. A school may demonstrate that it follows a racially nondiscriminatory policy by showing enrollment of student of racial minority groups in meaningful numbers and whether that is satisfied will be determined on the basis of facts and circumstances of each case. Actual enrollment, however, is a meaningful indication of a racially nondiscriminatory policy in the case in which schools become subject to desegregation orders of a federal court or otherwise expressly became obligated to implement a desegregation plan under the terms of any written contracts or other commitment to which any Federal agency was a party.

Issue 2

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer ORG	Tax Identification Number EIN	Year/Period ended May 31, 20XX	

IRC section 501(c)(3) provides for exemption of organizations organized and operated exclusively for charitable purposes, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c) (3)-1(b) (4) of the regulations provides an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the state in which it was created provided that its assets would, upon dissolution, be distributed to its members or shareholders.

Section 1.501 (c) (3)-1(c) (2) of the regulations provides an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Taxpayer's Position Issue 1

The organization acknowledged that it failed to keep records as required by Rev Proc. 75-50

Taxpayers Position Issue 2

The organization acknowledged that it did not distribute its assets for 501(c) (3) purposes.

Government's Position Issue 1

ORG failed to meet the reporting requirements of IRC Sections 6001 and 6033 by not providing the records required to determine if the organization was in fact operated for exempt purposes.

The organization failed to maintain all bank statements and credit card statements as required. The organization was able to back order copies of its bank statements and credit card statements. The organization failed to maintain records pertaining to income received. The organization was unable to produce records of tuition paid and a record of the number of students enrolled.

Additionally, ORG received exemption as an IRC 170(b) (1) (A) (ii) organization. ORG is required to maintain the records in accordance with Rev. Proc. 75-50, 1975-2 C.B. 587.

A school must include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin. ORG's charter and available bylaws do not contain a nonracial discriminatory policy.

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
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Rev. Proc. 75-50, 1975-2 C.B. 587 states a school must make its racially nondiscriminatory policy known to all segments of the general community served by the school. ORG has failed to provide records of advertising or other meeting disclosing a nonracial discriminatory policy.

Rev. Proc. 75-50, 1975-2 C.B. 587 requires each exempt private school must maintain for a minimum period of three years, beginning with the year after the year of compilation or acquisition, the following records for the use of the Service on proper request:

Records indicating the racial composition of the student body, faculty, and administrative staff for each academic year. ORG has failed to maintain or provide records indicating racial composition of the student body, faculty, and administrative staff for each academic year

ORG failed to provide copies of all brochures, catalogues, and advertising dealing with student admissions, programs, and scholarships. ORG failed to provide a record sufficient to indicate when and in what publications their advertisements were placed.

In accordance with Rev. Proc. 75-50, 1975-2 C.B. 587 ORG failed to keep records of all materials used by or on behalf of the school to solicit contributions.

Government's Position Issue 2

The organization failed to meet the requirements of Section 1.501(c) (3)-1(b) (4). The organization failed to distribute its assets to a qualified 501(c) (3). The organization sold its assets to a for profit organization. The organization fails to meet the requirements of IRC section 501(c) (3) and Section 1.501 (c) (3)-1(c) (2) of the regulations. The proceeds from the sale of assets were retained by the organization's director. The retained sale proceeds of the organization's assets inure the organization's director.

CONCLUSION:

Accordingly, the organization does not qualify for exemption as an organization described in section 501(c) (3) of the Code and its exempt status should be revoked. The organization's loss of exempt status is retroactive beginning June 1, 20XX.